1949. **File No.** O. Drugs
Legal Department 49

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A **BRANCH**

Subject:— Opinions under the Drugs Act, 1940.

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C O N T E N T S.

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			Opinions under the Drugs Act,1940	
1	9165 21-6-49	537Confl. 24-8-49	Rule 106--- Question whether there is no provision ~~Rukm~~ in the Act under which prosecution can be ~~B~~launched ~~kkm~~ against those who contravene the provisioned of rule 106	1-4
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L.D.R.I.No.9165, dt.21.6.1949.

Submitted with reference to H.& L.G.D. note at p. 5 ante.

In Govt. endorsement H.& L.G.D. No.4121/33-H dated. 18-1-1949, the Surgeon General was requested to askm the Drug Controler to enforce the provisions of Rule 106 of the Drug Rules 1946 strictly by prosecuting those who contravene those provisions. The S.G. has forwarded a copy of the letter from the Drug Cpntroller and agrees with the view taken by the latter that there is no provision either in the Drugs Act or in the Rules under which persons contravening the provisions of Rule 106 can be prosecuted. The H. & L.G.D. agrees with him. The papers have been forwarded to the R.L.A. for advise whether that view is correct.

3. Rule 106 of the Bombay Drug Rules, 1945, provides that no drug may purport or claim to cure any disease or ailment specified in Sch. J or to procure or assit to procure the miscarriages of woman.

From a perusal of the preamble to the Drugs Act (XXIII of 1940), it is clear that the Act is inteded to regulate the import, manufacture, distribution and sale of drugs. The word"Sale" used in the preamble and the words "purport or claim to cure any disease" in Rules 106 and indicate that the Drugs ACt and the Rules made thereunder were intended to control the advertisements in respect of he drugs. Section 33(f) of the Drugs Act and Rule 106 also indicates that such false advertisement are prohibited. Section 27 of the Act provides for the penalties for the manufacture for sale etc of such drugs. The point is not however free from doubt. From the Drug Controller's

letter at p.3 ante, it appears that the question of introduction of separte bill for the control of advertisement is under the contemplation of the Govt. of India.

Sd/- 26/7

A.A.S.

JPE.11/6/56.4c.

Office of the R.L.A.

Rule 106 of the Bombay Drugs Rules, 1945, provides that no drug may purport or claim to cure any disease or ailment specified in Schedule J or to procure or assist to procure the miscarriage of women. Under section 27 of the Drugs Act, which is a penal section, whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale or distributes any drug in contravention of any of the provisions of this Chapter or any rule made thereunder shall be punishable with imprisonment etc. The underlined words would naturall be given a strict construction following the usual principle of construction of penal laws. A mere advertisement of a drug which may be of the kind contemplated by rule 106 will not amount to manufactur for sale, selling, stocking or exhibiting for sale or distributing the drug. Even the concern which prepares the drug would not be brought within the am ambit of the s ction for the mere act of advertising it, much less the newspaper which publishes the advertisement. Either section 27 should be amended so as to make specific provisions for advertising a drug, or a separate law of the kind now under consideration should be made for that purpose. The view taken by the Drugs Controller is correct.

Id/- P .M.L.
22-8
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D.,No. 537-Confl. dated the 24th August 1949.